

(c) If served in connection with the taking of a deposition pursuant to § 502.203 unless otherwise agreed to by all parties or otherwise ordered by the presiding officer, the party who has requested the subpoena shall arrange that it be served at least twenty (20) days prior to the date specified in the subpoena for compliance therewith, the person to whom the subpoena is directed may move to quash or modify the subpoena within ten (10) days after service of the subpoena, and a reply to such motion shall be served within five (5) days thereafter. [Rule 132.]

§ 502.133 Attendance and mileage fees.

Witnesses summoned by subpoena to a hearing are entitled to the same fees and mileage that are paid to witnesses in courts of the United States. Fees and mileage shall be paid, upon request, by the party at whose instance the witness appears. [Rule 133.]

§ 502.134 Service of subpoenas.

If service of a subpoena is made by a United States marshal, or his or her deputy, or an employee of the Commission, such service shall be evidenced by his or her return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, the original subpoena shall be exhibited to the person served, shall be read to him or her if he or she is unable to read, and a copy thereof shall be left with him or her. The original subpoena, bearing or accompanied by required return, affidavit, or statement, shall be returned without delay to the Commission, or if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear. [Rule 134.]

§ 502.135 Subpoena of Commission staff personnel, documents or things.

(a) A subpoena for the attendance of Commission staff personnel or for the production of documentary materials in the possession of the Commission shall be served upon the Secretary. If

the subpoena is returnable at hearing, a motion to quash may be filed within five (5) days of service and attendance shall not be required until the presiding officer rules on said motion. If the subpoena is served in connection with prehearing depositions, the procedure to be followed with respect to motions to quash and replies thereto will correspond to the procedures established with respect to motions and replies in § 502.132(c).

(b) The General Counsel shall designate an attorney to represent any Commission staff personnel subpoenaed under this section. The attorney so designated shall not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under § 502.135(a) shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or unless the Commission, on its own motion, reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No ruling of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 135.]

§ 502.136 Enforcement.

In the event of failure to comply with any subpoena or order issued in connection therewith, the Commission may seek enforcement as provided in § 502.210(b). [Rule 136.]

Subpart J—Hearings; Presiding Officers; Evidence

§ 502.141 Hearings not required by statute.

The Commission may call informal public hearings, not required by statute, to be conducted under the rules in this part where applicable, for the purpose of rulemaking or to obtain information necessary or helpful in the determination of its policies or the carrying out of its duties, and may require the attendance of witnesses and the production of evidence to the extent permitted by law. [Rule 141.]

§ 502.142 Hearings required by statute.

In complaint and answer cases, investigations on the Commission's own motion, and in other rulemaking and adjudication proceedings in which a hearing is required by statute, formal hearings shall be conducted pursuant to 5 U.S.C. 554. [Rule 142.]

§ 502.143 Notice of nature of hearing, jurisdiction and issues.

Persons entitled to notice of hearings, except those notified by complaint served under § 502.133, will be duly and timely informed of (a) the nature of the proceeding, (b) the legal authority and jurisdiction under which the proceeding is conducted, and (c) the terms, substance, and issues involved, or the matters of fact and law asserted, as the case may be. Such notice shall be published in the FEDERAL REGISTER unless all persons subject thereto are named and either are personally served or otherwise have actual notice thereof in accordance with law. [Rule 143.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.144 Notice of time and place of hearing.

Notice of hearing will designate the time and place thereof, the person or persons who will preside, and the kind of decision to be issued. The date or place of a hearing for which notice has been issued may be changed when warranted. Reasonable notice will be given to the parties or their representatives of the time and place of the change thereof, due regard being had for the public interest and the convenience and necessity of the parties or their representatives. Notice may be served by mail or telegraph. [Rule 144.]

§ 502.145 Presiding officer.

(a) *Definition.* *Presiding officer* includes, where applicable, a member of the Commission or an administrative law judge. (See § 502.25.)

(b) *Designation of administrative law judge.* An administrative law judge will be designated by the Chief of the Commission's Office of Administrative Law Judges to preside at hearings required by statute, in rotation so far as practicable, unless the Commission or one

or more members thereof shall preside, and will also preside at hearings not required by statute when designated to do so by the Commission.

(c) *Unavailability.* If the presiding officer assigned to a proceeding becomes unavailable to the Commission, the Commission, or Chief Judge (if such presiding officer was an administrative law judge), shall designate a qualified officer to take his or her place. Any motion predicated upon the substitution of a new presiding officer for one originally designated shall be made within ten (10) days after notice of such substitution. [Rule 145.]

§ 502.146 Commencement of functions of Office of Administrative Law Judges.

In proceedings handled by the Office of Administrative Law Judges, its functions shall attach:

(a) Upon the service by the Commission of a complaint filed pursuant to § 502.62; or

(b) Upon reference by the Commission of a petition for a declaratory order pursuant to § 502.68; or

(c) Upon forwarding for assignment by the Office of the Secretary of a special docket application pursuant to § 502.92; or

(d) Upon the initiation of a proceeding and ordering of hearing before an administrative law judge. [Rule 146.]

§ 502.147 Functions and powers.

(a) *Of presiding officer.* The officer designated to hear a case shall have authority to arrange and give notice of hearing; sign and issue subpoenas authorized by law; take or cause depositions to be taken; rule upon proposed amendments or supplements to pleadings; delineate the scope of a proceeding instituted by order of the Commission by amending, modifying, clarifying or interpreting said order, except with regard to that portion of any order involving the Commission's suspension authority set forth in section 3, Intercoastal Shipping Act, 1933; inform the parties as to the availability of one or more alternative means of dispute resolution, encourage use of such methods, and require consideration of their use at an early stage of the proceeding; hold conferences for